

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JOHN DITTOE,

Plaintiff,

v.

BRYAN COLLIER, *ET AL.*,

Defendants.

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CIVIL ACTION NO. 5:23-CV-60-RWS

ORDER

Before the Court is Plaintiff John Dittoe’s motion for “partial immediate relief.” Docket No. 20. Plaintiff, proceeding *pro se* filed the above-captioned action complaining of alleged deprivations of his constitutional rights. Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636. Plaintiff then filed the present motion, stating that he is currently confined at the Clements Unit in Amarillo, where he was assaulted and threatened by his cellmate. Docket No. 20. Plaintiff contends that no one has responded to his complaints and requests placement in single cell restriction or a special housing unit. *Id.*

The Magistrate Judge construed Plaintiff’s motion as seeking a temporary restraining order or preliminary injunction and issued a Report recommending that the motion be denied without prejudice, as Plaintiff’s right to seek such relief may be available through the TDCJ administrative processes, or in the U.S. District Court for the Northern District of Texas, Amarillo Division—the court with jurisdiction over the Clements Unit. Docket No. 34. The Magistrate Judge’s Report was sent to Plaintiff on March 12, 2024. *Id.* To date, no acknowledgement of receipt or objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was

actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420–21, n.9 (5th Cir. 2019).


Because no objections have been received, Plaintiff is barred from *de novo* review by the District Judge of the Magistrate Judge’s proposed findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”). Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 34) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that Plaintiff’s motion for partial immediate relief (Docket No. 20), construed as a motion for injunctive relief, is **DENIED**. The denial of this motion is without prejudice to Plaintiff’s right to seek such relief as may be available through the administrative procedures of TDCJ, the courts of the State of Texas, or the U.S. District Court for the Northern District of Texas, the court with jurisdiction over the Clements Unit.

SIGNED this 10th day of June, 2024.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE